IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2673 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MALUJI KHENGARJI

Versus

STATE OF GUJARAT

Appearance:

MR SK PATEL for Petitioner

MR. A.G. URAIZEE, A.G.P. instructed by Purnand & Co. for the respondents.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 07/10/96

ORAL JUDGEMENT

The petitioner has challenged the order of the Gujarat Revenue Tribunal passed on 10.7.1984 in Restoration Application No. Ten.D.A.68 of 1984, rejecting the restoration application on the ground that the same was barred by the period of limitation.

2. Under Section 20 of the Agricultural Land Ceiling

Act, the Mamlatdar at Virangam initiated the inquiry regarding the holding of the land qua the petitioner. It was found by the Mamlatdar that the petitioner was holding the land in excess of the ceiling limit to the extent of 14 acres and 11 gunthas. In appeal before the Prant Officer excess holding was reduced to 8 acres and 11 gunthas. Being aggrieved by the order of the Prant Officer, the State Government preferred the Revision Application which was listed for hearing on 20.12.1983. On that day, the petitioner was not present because as alleged he was sick and was under the treatment of a doctor. In his absence the tribunal heard the matter and disposed the same of. The tribunal allowed the Revision Application and set aside the order of the Prant Officer and restored the order of the Mamlatdar. On 8.4.1984 the petitioner came to know about the order passed by the Tribunal and therefore he preferred the restoration application by invoking Section 20 of the Bombay Revenue Tribunal Regulations, 1958 whereunder if the matter is decided either finally or preliminary in the absence of the party, an application can be filed to restore the matter showing sufficient cause for non-appearance, and too within the period of 30 days as provided vide Section 21(1) of the Bombay Revenue Tribunal Regulations. As the petitioner came to know about the order on 8.4.1984, he filed the restoration application on 9.5.1984. The tribunal disposed of this restoration application only on one point namely limitation holding that the application for restoration was barred by the period of limitation as the same was not filed within the period of 30 days. The tribunal has observed that the Registrar of the Tribunal despatched the copy of the order on 27.12.1983 and the petitioner must have come to know thereabout earlier. The application was therefore not filed within the period of 30 days, and when it was thus barred by limitation, the same was dismissed. It is against that order, the present application has been preferred challenging the legality and validity of the order.

3. Mr. S.K. Patel, the learned Advocate, representing the petitioner submitted that in fact there was no delay at all as the petitioner came to know about the order on 8.4.1984 and the petition was filed on 9.5.1984 being the last day of the period of limitation fixed vide Section 21(1) of the B.R.T. Regulations, 1958. To take a liberal view in the matter, where there was catena of decisions in this regard, the Tribunal ought not to have taken highly technical view. The order tantamounting to throttling the justice at the threshold should never be passed. Usually delay has to be condoned; after all justice is the paramount

consideration. The order of the Tribunal was unjust and improper.

4. Mr. Uraizee, the learned A.G.P. representing the respondents has submitted that there is nothing on record to show that the petitioner was diligent and further there is no justification to allow the application as there is neither illegality nor invalidity of the order passed by the Revenue Tribunal. It is not the law that the court has to condone delay mechanically and as a matter of course. The court is vested with discretion and is supposed to dissect the merits of rival cases and pass the appropriate order.

5. The parties have submitted on the point of limitation vehemently. I would therefore like to elucidate the point of limitation covering all the aspects of the point raised during the course of the hearing. The general rule is that every matter, or appeal or application should be instituted within the period of limitation and if instituted after the prescribed period, the same shall be dismissed but there is an exception to this general rule. If the party satisfies the court that he had sufficient cause for not filing the petition, appeal, revision (not the suit) within the prescribed period, the court is vested with power to condone the delay and admit the petition, revision or appeal notwithstanding it having been filed after the expiry of limitation. But the discretion is not to be exercised lightly so as to damage the right of the other side. The discretion has to be exercised according to well established judicial principles, according to reason and fair play, and not according to whim or caprice. To put it differently, discretion means, sound discretion, guided by law. It must be actuated by rule and not by humour. It must not be arbitrary, vague, fanciful, but legal and regular. Discretion is, therefore, not to be exercised, merely because application is filed for condonation of delay. The party has to establish sufficient cause by leading necessary evidence. If the party fails to establish sufficient cause, the court cannot help him, even if there is a delay of a day. It should also be remembered that mere proof of the existence of sufficient cause for not filing the petition within the prescribed period does not under the law ipso facto, compel the court to excuse delay. The court has the discretion to admit, or to refuse to admit a petition, or appeal/revision even if sufficient cause is shown, because, it is a matter of concession or indulgence and the party cannot claim as of a right.

6. In order to show sufficient cause, the party has to show that though he was diligent, and in good faith, trying to file the petition in time, could not file because of the circumstances beyond his control. The test, therefore, whether or not the cause is sufficient, is to see whether it could have been avoided by the party by the exercise of due care and attention. But the law also lays down that the court cannot be overstrict while appreciating the evidence with regard to sufficient cause. The word "sufficient cause" should receive a liberal construction so as to advance substantial justice; when neither negligence nor inaction, nor want of bonafide is imputable to the applicant. This is what the Supreme Court and this Court have made clear in the cases of RAMLAL AND OTHERS VS. REWA COALFIELDS LTD., AIR 1962 SC 361, STATE OF WEST BENGAL VS. HAWRAH MUNICIPALITY AIR 1972 SC 74, SANDHYA RANI VS. SUDHA RANI AIR 1978 SC 53, COLLECTOR OF LAND ACQUISITION VS. KATIJI AND OTHERS AIR 1987 SC 1353, G. RAMGOWDA VS. SPECIAL ACQUISITION OFFICER AIR 1988 S.C. 897, AHMEDABAD ELECTRICITY COMPANY VS. ELECTRIC MAZDOOR SABHA 1989(2) G.L.H. 256 - 30(2) G.L.R. 823 AND MUNICIPAL CORPORATION OF AHMEDABAD VS. MANISH ENTERPRISES LTD. 33(2) G.L.R. 1252. What has been further made clear is that the sufficient cause has to receive liberal construction in the facts and circumstances of the case. The question of existence of sufficient cause is one to be decided from the facts and circumstances of a particular case. The fact that the other side will not be prejudiced by condonation of delay, is not a valid ground for excusing the delay. It is the duty of the party to know the last day on which he can present his petition or appeal or revision, and if delay is likely to be caused, as that has become necessary, he is also bound to know on what ground, the court can exercise power in his favour. At this stage, looking to the rival contentions, I think it necessary to mention about the decision of the Supreme Court in the case of AJIT SINGH THAKUR SINGH AND ANR. VS. STATE OF GUJARAT 22 G.L.R. 268 wherein it is held that the party is entitled to wait until the last day of limitation for filing the appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstances arising before limitation expired, it was not possible to file the appeal within time. No event or circumstances arising after the expiry of limitation can constitute such sufficient cause. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of

limitation. The burden therefore rests on him of adducing distinct proof of sufficient cause on which he relies. The court cannot be the latitudinarian, although there is no evidence or evidence is insufficient.

7. No doubt, therefore, liberal view has to be taken whenever the application for condonation of delay is preferred, but before that rule of law is applied, the court must be satisfied that necessary evidence appealing to its conscious is adduced by the party praying for condonation of delay, and sufficient cause for not preferring the appeal or application in time is shown. If no evidence is led, or if the evidence is led, but is neither appealing nor sufficient, the party praying for condonation of delay cannot succeed. If no evidence is led the question of taking liberal view does not arise.

8. It is made clear by the Tribunal in the order that the petitioner had led no evidence whatsoever. In order to show that he came to know about the order only on 8.4.1984, the petitioner ought to have filed affidavit stating his such case. If there is document supporting the case, the same should also be produced in support of ones own say. When he has led no evidence and has for the reasons best known to him abstained from filing the the affidavit, the tribunal was right in holding that there was no evidence whatsoever to condone the delay. It may be mentioned that in this petition in para 7 the petitioner has come out with a case that the postman delivered the envelope containing the copy of the order passed by the Tribunal to another person named Mulji Maly of his village and Mulji Maly handed over the cover to him about a month back. In such case, it was incumbent upon the petitioner to even file the affidavit of Mulji Maly and satisfy the conscious of the Tribunal that he in fact, came to know about the order on 8.4.1984 and not prior to it. When he preferred to lead no evidence whatsoever, and for no good reasons abstained from adducing any evidence the tribunal was perfectly right in inferring everything against the petitioner. When no evidence is led, there is no just cause to take a liberal view, and negligence, inaction and abandonment of case can be attributed to him.

9. It was next contended on behalf of the petitioner by pointing out the decision rendered by this court in the case of PATEL KARSHANBHAI DWARKADAS VS. STATE 1994(1) GCD 578 that on account of default on the part of the advocate party should not suffer. The advocate engaged might not have advised to file affidavit. I

agree with the principle laid down in that decision, but that decision cannot be pressed into the services of the petitioner because the petitioner has neither put forward a case that his advocate did not advise him to file the affidavit and therefore he could not file the affidavit in this regard. When that case is not pleaded and the same is not stated on oath filing the affidavit the submission based on the aforesaid authority cannot be accepted. If accepted, it would amount to accepting the case not at all pleaded, and unjustly siding the petitioner on the basis of conjectures and inferences, certainly condemned in law.

10. Mr. S.K. Patel, learned Advocate, representing the petitioner made a lame attempt by submitting that on the day the petitioner was sick and therefore he could not know about the order earlier. The case of sickness is challenged and the bare copy of doctor's certificate is also assailed. However the certificate cannot lead me to agree with the submission. A copy of the doctor's certificate is produced at Annexure-B and that shows that the petitioner was taking treatment as an outdoor patient from 15.12.1983 to 30.3.1984 . Sickness cannot be the cause of ignorance always. He was taking treatment as outdoor patient and so he was in a position to move out, and know about his affairs. He was not incapacitated from receiving letter or message or read the letter or get the letter read over. It seems the petitioner is shedding crocodile tears.

11. Even if the Registry of the Tribunal might have on 27.12.1983 despatched the copy of the order but it was not just and proper on the part of the Tribunal to hold that within few days thereafter the petitioner must have received the letter as presumption about delivery would not arise. Ordinarily such contention can find favour; but in this case it is not possible to accept the contention. As stated above Mulji Maly handed over the cover he received from the postman to the petitioner. It was hence incumbent upon the petitioner to file the affidavit of Mulji Maly so as to show that delivery was effected not prior to 8.4.1984. When the available evidence is withheld, the Tribunal was right in holding that delivery of the copy of order by post was made within few days from 27l.12.1983. No other contention is raised.

12. For the aforesaid reasons, I see no justification to interfere with the order passed by the Tribunal. The petition being devoid of merits is hereby rejected. No

order as to costs. Rule is discharged.

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